

# Yamhill County District Attorney's Office

## Policy Manual

### OVERRIDING PRINCIPLES

Our mission at the Yamhill County District Attorney's Office is to pursue the truth, seek justice, and protect our community. All members of our office should act with this mission statement as their guiding principle.

The purpose of this policy manual is to provide guidance and direction for Yamhill County District Attorney's Office personnel. It should be used in conjunction with direction from District Attorney's Office managers and supervisors along with all relevant supervisory, legal, and ethical authorities. These authorities include, but are not limited to, the following:

1. Applicable state and federal statutory and case law
2. Yamhill County Circuit Court policies, orders, and supplemental rules
3. Uniform Trial Court Rules
4. Oregon Supreme Court Chief Justice Orders
5. Oregon Rules of Professional Responsibility
6. Yamhill County policies
7. Oregon ethics law

If any policies conflict with other relevant legal or ethical authority, the legal or ethical authority controls. In addition to policies in this manual, all employees are required to be familiar with and adhere to all Yamhill County policies.

#### **I. Professionalism and Prosecutorial Ethics**

All employees of this office hold a public trust and represent the Office of the District Attorney. They are expected to abide by the Yamhill County District Attorney Office's policies and principles. All employees are expected to exercise good judgment, integrity, and common sense in their everyday dealings with the public, defense attorneys, representatives of other departments, other agencies and organizations, and each other.

Employees of this office are expected to maintain the highest ethical standards. This means that all staff are expected to conduct themselves with integrity and honesty while at work and be mindful that public service is a public trust.

All employees are expected to be knowledgeable of and in compliance with applicable professional and ethical standards. Deputy District Attorneys (DDAs) must be familiar with all laws, rules, and guidelines that govern the practice of law and prosecution. These include applicable state and federal statutes and case law, Uniform Trial Court rules, Oregon Rules of Professional Responsibility, and Oregon Supreme Court Chief Justice Orders.

## **II. Confidentiality**

Employees of this office are responsible for maintaining confidentiality of information they learn as part of their employment. Further, they must agree to abide by the terms the Confidentiality Agreement set forth in Attachment A.

## **III. Charging Decisions**

All charging decisions are to be made with the goal of protecting the public by delivering justice. Deciding whether criminal charges should be filed and initiating the charging process is the responsibility of DDAs. DDAs should ensure that charges filed reflect the criminal conduct committed and provide for an appropriate sentence. DDAs are not obligated to file all possible charges that the evidence might support. They may properly exercise discretion to present only those charges which are consistent with the evidence and in the best interests of justice.

Ultimately, filed charges should reflect the conduct, adequately represent victims, and provide a basis upon which accountability and justice can be obtained.

In making the charging decision, DDAs shall file only those charges which are reasonably substantiated by admissible evidence at trial.

This charging policy applies to all felony and misdemeanor criminal cases, including but not limited to controlled substance crimes, DUI ORS 813.010 or 813.011, domestic violence, crimes which require mandatory minimum sentences, and to the aggregation of property offenses under 164.043, 164.045, 164.055, 164.057, 164.061, 164.098, 164.125, 164.140, 164.367, 165.013, 165.055, 165.694, and 165.803.

## **IV. Plea Offers**

The Yamhill County District Attorney's Office will conduct plea negotiation efforts in a professional, nondiscriminatory and nonpartisan manner. In all plea negotiations this office shall be guided by the relevant constitutional, ethical and statutory considerations.

All plea offers on Measure 11 cases will be done after consultation with the District Attorney, or with the Chief Deputy District Attorney if the District Attorney is unavailable. These case reviews will examine the strength of the case, victim input, any mitigating factors, and any aggravating factors.

Plea negotiations should be undertaken with the aim of protecting the public by delivering justice. All plea offers should be done in a way that seeks to achieve justice considering the conduct and provable

offenses. They are to be provided to defendants pursuant to promoting efficient yet just outcomes. DDAs retain discretion to negotiate dismissals, non-prosecution, and sentencing recommendations in all cases subject to the general standards for plea agreements.

#### **V. Victim Input and Consultation**

Victims are the only party in the criminal justice system that become involved with the criminal justice system involuntarily. This office will, always, seek to involve the victim as much or as little as they wish. Consistent with the Oregon Constitution and the philosophy of the Yamhill County District Attorney's office, the assigned DDA shall solicit and consider input from the victim during the plea negotiation process when required by law.

#### **VI. Crime Victim's Rights**

The Yamhill County District Attorney's Office makes every effort to ensure crime victims play a meaningful role in the criminal and juvenile justice system. We treat them with dignity and respect. We make every effort to provide victims with as large a part as possible in each phase of a criminal case. DDAs shall familiarize themselves with the Crime Victims Bill of Rights as well as with Article 1, Section 42 of the Oregon Constitution, the Crime Victim's Rights Amendment. The interests of the victim should be kept in mind when setting the hearing date and during plea negotiations in any felony involving a person.

#### **VII. Victim Restitution**

It is our policy to seek restitution equaling the amount of provable pecuniary loss for victims of all types of crimes. Seeking such restitution in no way supersedes or obviates any civil claims a victim might make against the defendant. DDAs shall work with Crime Victim Advocates related to restitution requests made by crime victims.

DDAs should request that judges pronounce sentence in such a way that leaves all defendants jointly and severally liable for the victim's losses and equally responsible for the expenses incurred by all parties because of their criminal actions (ORS 147.005 –147.365).

#### **VIII. Decision to Pursue Death Penalty**

In Oregon, the death penalty is limited to a very narrow category of cases that qualify as Aggravated Murder.

All DDAs responsible for the prosecution of aggravated murder cases must consider the law and evidence of each case and decide whether seeking the death penalty would be a just outcome. The ultimate decision to pursue the death penalty will be at the sole discretion of the District Attorney.

**IX. Guilty Except Insanity Dispositions**

Guilty Except Insanity (GEI) dispositions are controlled by the Oregon Revised Statutes. DDAs shall be familiar with all applicable laws and procedures regarding GEI. Generally, DDAs shall not stipulate that a defendant meets the criteria for GEI. In cases where there may be sufficient evidence for a GEI defense, the DDA may agree to a stipulated facts trial. The ultimate determination regarding whether the defendant meets the criteria for a GEI defense shall be made by the court.

**X. Fines and Fees**

Generally, DDAs should request that the court impose standard and appropriate fines and fees pursuant to the applicable ORS. DDAs retain discretion to agree to reduction or waiver of legally reducible fines and fees if such a reduction serves the interests of justice.

DDAs will seek restitution equaling the amount of provable pecuniary loss for victims of crime.

Court-appointed attorney fees are determined by the court.

**XI. Sentence Reduction Provisions**

DDAs should advocate that sentence provisions which reduce the initial sentence declared by the judge are only given after all required legal findings are made. (i.e.: ORS 137.751 for AIPs.)

**XII. Collateral Consequences of Conviction**

Collateral consequences to a conviction are those events that result from a conviction that are separate from those which are directly related or legally required. Collateral consequences for defendants may include consequences impacting employment, housing, immigration status, or education. DDAs should be aware of the collateral consequences of convictions and the underlying criminal behavior. When considering an appropriate resolution to a case, DDAs may consider collateral consequences and their impact on the defendant, victims and their family members, and the community.

**XIII. Anti-profiling policy**

Pursuant to ORS 131.915 and 131.920, under no circumstances should decisions made by any District Attorney's Office employee be based upon a person's real or perceived age, race, ethnicity, color, national origin, language spoken, sex, gender identity, sexual orientation or identity, political affiliation, religion, homelessness, or disability. All actions made by DA's Office employees must be consistent with this policy manual and office mission statement.

If any DA's Office employee is aware of a violation of this anti-profiling policy, that employee is required to report the information to a supervisor without delay. A complaint of a violation of this anti-profiling

policy may be made by any means, including, but not limited to, in person, in writing, or by phone. Any complaints of a violation of this anti-profiling policy will be received, documented, and investigated, and in each complaint, a response will be provided to the complaint within a reasonable timeframe. Furthermore, a copy of such complaint will be forwarded to the law-enforcement contacts policy data review committee.

#### **XIV. Civil Compromise**

Civil compromises are available under Oregon law (ORS 135.703 and ORS 135.705) in instances in which a defendant is charged with a crime punishable as a misdemeanor. The injured party may seek to handle the matter as a civil proceeding. The Court, on payment of costs and expenses incurred, may order the complaint dismissed. As a policy principle, we generally disfavor civil compromises. Civil compromises, if used frequently, tend to favor affluent criminals and provide them with more lenient treatment within the criminal justice system. Treating an accused more leniently because of their affluence is inappropriate. In the interest of justice and in the interest of protecting community safety, this office believes that criminal acts should be handled in criminal court.

The Oregon State Bar has ruled that it is unethical under certain circumstances for a prosecuting attorney to advise an injured party against opting for a civil compromise of a criminal case. Providing information to a victim on the results of a civil compromise is appropriate. Advising or suggesting the victim's position on a proposed civil compromise offer is not appropriate and should not be done.

#### **XV. Adult Recovery Court**

The Yamhill County Adult Recovery Court (ARC) is a post-adjudication recovery court which allows graduates to avoid a sentence of incarceration, shorten the term of probation, or consolidate multiple probation sentences. Eligibility and exclusion criteria for ARC is predicated on empirical evidence indicating which types of offenders can be treated safely and effectively in drug courts. Candidates are evaluated for admission to ARC using evidence-based assessment tools and procedures. ARC targets offenders for admission who have a severe substance use disorder and are at substantial risk for reoffending or failing to complete a less intensive disposition.

The DDA assigned to the ARC team works to identify possible cases for ARC and ensure that participants are those who are serious about overcoming their substance use disorder. The ARC DDA also works to ensure that participants who commit new crimes are terminated from the program.

#### **XVI. Pre-trial release**

The following provisions directly govern Oregon's law related to pre-trial release: Article I, § 14 of the Oregon Constitution; Article I, § 43 of the Oregon Constitution; and ORS 135.230 – ORS 135.290.

All DDAs are expected to be familiar with these laws and to advocate for implementation of their provisions.

## **XVII. Pretrial Discovery**

The discovery obligations of the Yamhill County District Attorney's Office are generally established by ORS 135.805 – 135.825; ORS 135.845 – 135.855; *Brady v. Maryland*, 373 US 83 (1963); *Giglio v. United States*, 405 US 150 (1972) and Rule 3.8 of the Oregon Rules of Professional Conduct. To meet discovery obligations in each case, DDAs must be familiar with these authorities and with the judicial interpretations that discuss or address the application of these authorities to particular facts. DDAs must also thoroughly consider how to meet their discovery obligations in each case and consult with their supervisors for guidance whenever appropriate.

Our practice is to disclose appropriate police reports and other discoverable materials to defense counsel at the earliest opportunity after a case has been filed. In certain types of cases, sex offenses and cases involving domestic violence, discovery will be provided as soon as possible after arraignment on indictment. The DDA assigned to a case is primarily responsible for ensuring appropriate discovery production occurs.

Fees for discovery copies are set by the Yamhill County District Attorney's Office and approved by the Yamhill County Board of Commissioners. Please see our current discovery fee schedule in **Attachment B**.

Requests for Discovery and billing questions may be emailed to [ycdadiscovery@yamhillcounty.gov](mailto:ycdadiscovery@yamhillcounty.gov)

All written agreements entered between Yamhill County law enforcement agencies that relate to data retention and data sharing will be open and available to inspection by the public.

## **XVIII. Record Retention**

All Yamhill County District Attorney records must be maintained in compliance with the Records Retention & Destruction Schedule published by the Oregon Secretary of State or by Oregon state law.

## **XIX. The Use of Certified Law Students**

Internships in our office can provide educational opportunities for future attorneys and others. Internships also expose interns to the efforts we take to protect the public and deliver justice. In return, our office receives legal assistance at a reduced cost to taxpayers. To ensure proper supervision and successful internships, all legal interns will be supervised by the Chief DDA or DDA III.

## **XX. Affidavits of Prejudice Against a Judge**

When a DDA believes that a sitting judge's prejudice against the state is such that they believe they should seek to disqualify the judge from hearing a case or cases, then that DDA shall provide their reasons for their position to the District Attorney. Affidavits of prejudice, motions to excuse, or requests for a judge to recuse himself or herself can be filed only with the written approval of the District

Attorney. Affidavits of prejudice are filed by the District Attorney with the presiding Circuit Court judge. A copy is provided to the judge who is the subject of the affidavit.

#### **XXI. Public Records**

It is the policy of the Yamhill County District Attorney's Office to respond to public records requests in an orderly, consistent, and reasonable manner in accordance with public records law.

All employees are responsible for ensuring compliance with Oregon's public records laws, including retention of public records.

Public records requests are subject to strict timelines and requirements. If an employee receives a public records request in any form, the request should be forwarded without delay to the Office Manager for processing. A public records request should be submitted to [DAPublicRecordsRequest@yamhillcounty.gov](mailto:DAPublicRecordsRequest@yamhillcounty.gov).

#### **XXII. Yamhill County Deflection Program under House Bill 4002**

The Yamhill County Deflection Program was developed in response to Oregon House Bill 4002. This Bill encouraged law enforcement to refer individuals who possess small user level quantities of controlled substances known as a "drug enforcement misdemeanor" or "DEM" to a deflection program in lieu of prosecution. The goal of deflection is to encourage individuals who have committed a DEM to participate in substance abuse treatment before criminal charges are filed. If deflection is successful, criminal charges are not filed.

In Yamhill County, the following types of charges may be eligible for deflection: standalone DEM, DEM and Disorderly Conduct II, or DEM and Frequenting a Place where Controlled Substances are used.